

**Cumberland County Health Department use in preparing the report required pursuant to
Session Law 2014-120, Section 29.(b).**

Part 1A: On-site Water Protection: Standardize Certain Regulatory Review Procedures

Reference Session Law 2014-120, Section 29.(b).

Background: The On-site waste water section receives applications onsite wastewater systems under multiple scenarios as provided for in statute and rule. The processes of review are described below.

First type of Regulatory submittal

Systems with design daily flows > 3,000 total gallons per day [15A NCAC 18A .1938(e)]
or for treatment of industrial process wastewater (IPWW) [15A NCAC 18A .1938(f)]:

State review required and are referred to the On-site Water Protection Branch (OSWP)

- 1) Before arriving on the site, the EHS shall review the application and all attached information. The proposed maximum daily flow rate shall be noted.
- 2) Upon arrival at the proposed site, the EHS shall determine that all property boundaries, proposed structures, and expansions to existing structures are accurately located/marked. At this point, if the marked property boundaries are in conflict with the site plan/plat submitted with the application, no further evaluation shall be conducted until the discrepancies are corrected.
- 3) Sufficient auger borings shall be conducted on the site to give the EHS an accurate description of overall site conditions as described in NCAC .1900. No fewer than **TWO** auger borings shall be done. Auger borings shall be located sufficient distance apart to give an accurate representation of the proposed initial and replacement (repair) system areas. A complete soil description of each auger boring shall be separately documented. Auger borings shall be accurately labeled and located on the site evaluation diagram. and/or construction authorization.
- 4) Soil and site information shall be used to determine the LTAR for both the initial system and repair system on lots that are determined to be either provisionally suitable or suitable. The proposed LTAR shall be adjusted downward in the following cases:
 - a. The presence of soil characteristics that: reduce the treatment capability of the soil such as soil wetness condition, etc.; reduce the disposal capability of the soil such as high clay content, expansive clay mineralogy, B/C horizons, weak soil structure, etc.
- 5) The proposed wastewater flow may have higher BOD levels than domestic wastewater
DETERMINATION OF AVAILABLE SPACE. The following formula shall be used to determine whether or not enough space exists on the site for the initial and replacement systems: $\{(\text{length of line in initial system}) + (\text{length of line in replacement system})\} \times 9 \times 1.25$. The solution to this formula is the minimum amount of square footage of land area needed to install initial conventional and replacement systems (if innovative or alternative technology is proposed

then trench length and spacing components in the formula are to be adjusted accordingly). If this amount of area is not available, a detailed layout of both the initial and replacement systems must be performed **before** the improvement permit and the authorization for construction. If the nitrification trenches are not uniformly distributed and line direction and spacing varies between trenches, a complete layout of the entire nitrification field shall be completed.

- 6) For expansion evaluations, in addition to the above procedures, the existing septic tank and distribution devices shall be uncovered for inspection and the existing nitrification trenches shall be located and marked. The existing system shall also be accurately labeled and located on the site evaluation diagram.

7)

The EHS shall also note the location of all wells, streams, surface water bodies, ditches, and cuts that may impact the proposed onsite system on the site evaluation diagram. Observations shall include a visual inspection of the surrounding area off the site. If the proposed structure location as staked in the field differs from the setbacks shown on the applicant's site plan, the differences must be noted on the site evaluation sheet. The applicant must be contacted and the differences resolved prior to issuance of the improvement permit.

Part 1B: Food Protection and Facilities: Standardize Certain Regulatory Review Procedures

Reference Session Law 2014-120, Section 29.(b).

Background: The Food Protection and Facilities Branch (FPF) reviews plan submittals for prototype food establishments to be franchised in multiple counties. Local environmental health staff acting as authorized agents of the Department review individual food establishment plans. Plans for construction of public swimming pools are also reviewed by local health department staff acting as agents of the Department with technical assistance from the FPF staff. Plan review checklists are used to assure uniform review for compliance with the rules.

A. A Food Service Plan Review Application form and guidance are provided to assure all needed information is in order for approval.

B. A public Swimming Pool Plan Review Checklist is used to check pool plans to assure all safety requirements and circulation system components are able to meet the water quality requirements.

**Part 2A: On-site Water Protection Informal Internal Review Processes
and
Procedures to Develop and Maintain a List of Review Engineers**

Reference Session Law 2014-120, Section 29.(c).

The following definitions apply throughout this document:

- A. Practice of Engineering. – As defined in G.S. 89C-3.
- B. Professional Engineer (PE). – As defined in G.S. 89C-3.
- C. Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated authority from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- D. Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated authority from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- E. Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.

Scope:

This guidance is applicable to Regulatory Submittals prepared, sealed and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. These Regulatory Submittals are reviewed by either the On-Site Water Protection Branch (OSWP) or the local health department (LHD) environmental health staff acting under delegated authority.

A. Regulatory Submittals that include the following must be submitted to OSWP for review:

1. Systems with design daily flows > 3,000 total gallons per day [15A NCAC 18A .1938(e)];
2. Systems designed pursuant to 15A NCAC 18A .1949 (c) or (d);
3. Systems designed for treatment of industrial process wastewater (IPWW) [15A NCAC 18A .1938(f)];
4. Prefabricated septic tanks, pumps tanks, effluent filters, risers and riser covers, and pipe penetrations [15A NCAC 18A .1953 and .1954];
5. Residential wastewater treatment systems [15A NCAC 18A .1957(c)]; and
6. Applications for wastewater systems, components, or devices that are submitted under Rule 15A NCAC 18A .1969.

B. Other Regulatory Submittals are submitted directly to the LDH who, in turn, either reviews or requests review by OSWP [15A NCAC 18A .1938(f)].

III. Informal Internal Review Process

North Carolina Session Law 2014-120, Section 29(c) identifies two circumstances that allow a Submitting Party to request an Informal Internal Review of the LHD or OSWP review:

A. The Regulatory Submittal includes a design or practice sealed by a PE that is not included in the Regulatory Authority's existing guidance, manuals or standard operating procedures.

The internal review process for these requests depends on whether the Regulatory Submittal was submitted to the LHD or OSWP:

1. Submittal to OSWP

- a. The OSWP staff engineer (hereafter “staff engineer”) reviews the Regulatory Submittal in accordance with procedures outlined in Part IA of this report.
- b. If the staff engineer is not a NC licensed PE, then the Submitting Party may request an Informal Internal review by the reviewer’s supervisor.
- c. If the reviewer’s supervisor is not a NC licensed PE, review may be provided by a consulting NC licensed PE selected from a list developed and maintained by the Regulatory Authority in accordance with Article 3D of Chapter 143 of the North Carolina General Statutes.
- d. The Regulatory Authority may charge the Submitting Party for costs of the review by the consulting NC licensed PE.
- e. The OSWP Branch has the authority to make the final decision, even if review of the Regulatory Submittal is conducted by a consulting NC licensed PE.

2. Submittal to LHD

- a. LHD Staff review the Regulatory Submittal
- b. If requested by the Submitting Party, informal review will be conducted by
 - (a) Reviewer’s supervisor or,
 - (b) A staff engineer (NC licensed PE)
- c. If neither the LHD nor OSWP Branch employs a NC licensed PE that is qualified and competent to perform the review, then:
 - (a) Review may be provided by a consulting NC licensed PE selected from a list developed and maintained by the Regulatory Authority in accordance with Article 3D of Chapter 143 of the North Carolina General Statutes.
 - (b) The Regulatory Authority may charge the Submitting Party for costs of the review by the consulting NC licensed PE.
- d. The OSWP Branch will notify the LHD, the Submitting Party and other applicable parties of the decision reached during the Informal Internal Review process.
- e. The OSWP Branch has the authority to make the final decision, even if review of the Regulatory Submittal is conducted by a consulting NC licensed PE.

B. There is a disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether statute or other regulatory authority mandates the revisions or requests for additional information made by the Regulatory Authority.

1. In these cases, the Regulatory Authority will conduct an informal hearing with one of the following groups, as appropriate:

- a. A review panel including the Environmental Health Section Chief or their designee, LHD personnel, Stakeholders representative(s) chosen by the Submitting Party and others as appropriate for the following instances:
 - (a) Systems with design daily flows > 3,000 total gallons per day [15A NCAC 18A .1938(e)];
 - (b) Systems designed pursuant to 15A NCAC 18A .1949 (c) or (d);
 - (c) Systems designed for treatment of industrial process wastewater (IPWW) [15A NCAC 18A .1938(f)];
- b. Members of the Experimental and Innovative (E&I) Technical Advisory Committee for the following types of Regulatory Submittals:
 - (a) Prefabricated septic tanks, pumps tanks, effluent filters, risers and riser covers, and pipe penetrations [15A NCAC 18A .1953 and .1954];
 - (b) Residential wastewater treatment systems [15A NCAC 18A .1957(c)]; and

(c) Applications for wastewater systems, components, or devices that are submitted under Rule 15A NCAC 18A .1969.

2. The OSWP Branch will notify the LHD, the Submitting Party and other applicable parties of the decision reached during the Informal Internal Review process.

IV. Procedure For Developing and Maintaining a List of PEs for Informal Internal Reviews

A. PEs for Informal Internal Reviews will be selected in accordance with Article 3D of Chapter 143 of the NC General Statutes (<http://www.ncbels.org/forms/minibrooksact.pdf>) including:

1. Announcing requirements for these engineering consultative services;
2. Selecting firms that are qualified to provide such services on the basis of demonstrated competent and qualification without regard to fee; and
3. Negotiating a contract.

B. The OSWP will publish an announcement of the need for Consultative Services on its website and request that various professional engineer associations such as NCBELS, PENC, and NSPE post our intention to compile this list on their websites.

C. Draft a Request for Inclusion on the EH Section's NCPE Informal Internal Review List for dissemination to the general professional engineer population. Using this form, respondents will provide:

1. Licensee's name;
2. NCPE license number;
3. Licensure field/area;
4. Contact information; and,
5. Years of experience designing ground absorption sewage treatment and dispersal systems.

D. The protocol to review Requests for Inclusion will include:

1. Appropriate field of engineering expertise;
2. Benchmark minimum number of years engaged in this activity;
3. Benchmark minimum number of engineered designs approved.

E. The list will be finalized based on prequalification to do business in the state via the State of North Carolina Interactive Purchasing System.

F. The EH Section will post the list of PEs approved for Informal Internal Review processes on its website and update it as appropriate.

**Part 2B: Food Protection and Facilities Informal Internal Review Processes
and
Procedures to Develop and Maintain a List of Review Engineers**

Reference Session Law 2014-120, Section 29.(c).

I. Definitions

The following definitions apply throughout this document:

A. Practice of Engineering. – As defined in G.S. 89C-3.

B. Professional Engineer (PE). – As defined in G.S. 89C-3.

C. Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated authority from the Department of Environment and Natural Resources or the Department of Health and Human Services.

D. Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated authority from the Department of Environment and Natural Resources or the Department of Health and Human Services.

E. Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.

II. Scope:

This guidance is applicable to Regulatory Submittals which may be submitted by an engineer or architect for food establishment or public swimming pools and may apply to plans submitted for institutions that provide health care, confinement or educational services.

A. When plan approval is not granted on a submittal, the submitting party is notified of which rules are not met and what problems need to be corrected upon resubmittal.

B. If resubmittal does not fully comply with the rules, the process of resubmittal may be repeated or notification will be given that the plans are not approved, what rules are not met, and what the formal appeals procedure is, explaining that there is a 30-day window for formal appeals.

C. Differences of opinion regarding the interpretation of a rule may be resolved through an informal review as provided in rule 15A NCAC 18A .2676.

15A NCAC 18A .2676 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE

(a) If a permit holder disagrees with a decision of the local health department on the interpretation, application, or enforcement of the rules of this Section the permit holder may:

(1) Request an informal review pursuant to Paragraphs (d) and (e) of this Rule; or

(2) Initiate a contested case in accordance with G.S. 150B.

(b) The permit holder is not required to complete the alternative dispute resolution prior to initiating a contested case in accordance with G.S. 150B.

(c) When a petition for a contested case is filed, the informal review process shall terminate.

(d) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall state the issues in dispute. If the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the food establishment is located, or when the county or area has only one registered environmental health specialist assigned to inspect food establishments, the Environmental Health Regional Specialist assigned to that county or area shall conduct the local informal review. As soon as possible, but at least within 30 days of receipt of the request, the person conducting the review shall contact

the permit holder, provide that permit holder an opportunity to be heard on the issues in dispute and issue a written decision addressing the issues raised in the appeal. Copies of the decision shall be mailed to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(e) Following receipt of the written decision of the Environmental Health Supervisor or his or her representative issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department to be responsible for final decisions on appeals from throughout the state. Notice of such appeal shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision, and shall be postmarked or hand-delivered to the local health department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (a) of this Rule. Within 35 days of receipt of this appeal, the designated Informal Review Officer shall hold a conference in Wake County. At least 10 days prior to the conference, the Informal Review Officer shall provide notice of the time and place of this conference to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (g) of this Rule or by the State Health Director.

(f) If the decision on appeal at the local or state level results in a change in the score resulting from an inspection of an establishment, the regulatory authority shall post a new grade card reflecting that new score.

(g) Appeals of the decision of the designated Informal Review Officer shall be in accordance with G.S. 150B.

(h) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .2661 of this Section.

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.

D. If the Submitting Party requests Informal Internal review by a PE, the FPF will follow the procedure described below.

III. Procedure For Developing and Maintaining a List of PEs for Informal Internal Reviews

A. PEs for Informal Internal Reviews will be selected in accordance with Article 3D of Chapter 143 of the NC General Statutes (<http://www.ncbels.org/forms/minibrooksact.pdf>) including:

1. Announcing requirements for these engineering consultative services;

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2. Selecting firms that are qualified to provide such services on the basis of demonstrated competent and qualification without regard to fee; and

3. Negotiating a contract.

B. The FPF will publish an announcement of the need for Consultative Services on its website and request that various professional engineer associations such as NCBELS, PENC, and NSPE post our intention to compile this list on their websites.

C. Draft a Request for Inclusion on the EH Section NCPE Informal Internal Review List for dissemination to the general professional engineer population. Using this form, respondents will provide:

1. Licensee's name;

2. NCPE license number;

3. Licensure field/area;

4. Contact information; and,

5. Years of experience designing food service facilities or public swimming pools

D. The protocol to review Requests for Inclusion will include:

1. Appropriate field of engineering expertise;

2. Benchmark minimum number of years engaged in this activity;

3. Benchmark minimum number of engineered designs approved.

E. The list will be finalized based on prequalification to do business in the state via the State of North Carolina Interactive Purchasing System.

IV. The EH Section will post the list of PEs approved for Informal Internal Review processes on its website and update it as appropriate.

Part 3A: Onsite Water Protection Review of Working Job Titles

Reference Session Law 2014-120, Section 29.(h).

Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals

- A. Environmental Health Director
- B. Environmental Health Program Specialist
- C. Environmental Health Specialist

Cumberland County Environmental Health has no working titles with the term “Engineer” included.

None of those position descriptions require that employees be licensed PE.

Part 3B: Food Protection and Facilities Review of Working Job Titles

Reference Session Law 2014-120, Section 29.(h).

Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals

D. Environmental Health Director

E. Environmental Health Program Specialist

F. Environmental Health Specialist

Cumberland County Environmental Health has no working titles with the term “Engineer” included.

. None of those position descriptions require that employees be licensed PE.